



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to force the landlord to comply with the Act in regard to a tenant's right to privacy.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Is the tenant entitled to an order to force the landlord to comply with the Act in terms of protecting the tenant's right to privacy?

Background and Evidence

The burden of proof is on the tenant to establish that the landlord is in violation of the Act and that the landlord should be ordered to take action to comply with the Act.

The tenancy began on October 1, 2007 and rent is \$478.00 and a security deposit of \$381.50 was paid.

The tenant testified that the landlord permitted residents in the complex to create a garden in the common area adjacent to the tenant's ground-floor suite. The tenant argued that the gardeners had a clear view into the window of his suite. The tenant felt that his right to privacy had been compromised by the landlord's actions in permitting this to be created. The tenant submitted photos of views to and from his rental unit.

When asked what action the tenant believed should be taken by the landlord in order to comply with the tenant's right to privacy under the Act, the tenant suggested that the

resident's access to garden should be limited to certain times, or that they should be required to let the tenant know when they intended to be on the site.

The landlord testified that all residents in the complex had the right to utilize common areas under the Act and implied terms of their respective tenancy agreements. The landlord testified that they are not prepared to implement additional restrictions on the use and or hours of access of this area.

The tenant pointed out that the presence of other residents in the new garden area did not intrude on the tenant's right to privacy as there is a 10-foot patio beside the unit bordered by a 6-foot hedge beside which is a recessed walkway and then a raised area where the garden is located. The landlord made reference to photographs that showed that the tenant's window would not be clearly visible by gardeners. The photos showed that the ground is even higher beyond the fence dividing this property from the neighbouring property and the landlord stated that, it is likely that the tenant's window may be visible from this remote vantage point, but would not be clearly visible by persons doing the garden work.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In regard to the tenant's allegation that the landlord deprived the tenant of the right to reasonable privacy in violation of the Act, I find that the tenant's privacy, if compromised at all, is primarily affected by the proximity of his rental unit in the complex, being a ground-level suite next to an access adjacent to an elevated shared common area. I find that this situation is not attributable to any actions of the landlord as the tenant has been located next to the walkway and common area for the duration of his tenancy.

I find that the recent change resulted from other residents who chose to utilize this particular common area, that they all have a right to use under section 28(d) of the Act, for the purpose of creating a garden. Section 28(d) states that tenants are entitled to the

use of common areas for reasonable and lawful purposes, free from significant interference. Again, I do not find this choice of usage to be a violation of the Act, nor do I find this to be an action or decision that was initiated by the landlord in violation of the Act.

In regard to the tenant's argument that the landlord had an obligation under the Act to protect the tenant's right to "reasonable" privacy, under section 28(a) of the Act, by taking action to impose and monitor time limits or notification requirements on every resident who uses the garden area, I find this to be unnecessary as the tenant's privacy has not been substantially impacted by gardeners, due to the distance, presence of foliage and also because the tenant has other options that he could pursue to accomplish privacy, such as using blinds, putting up a free-standing screen or installing opaque or sheer draperies to shield the view, like many ground-floor residents do.

I find that, if the landlord were to impose time constraints or reporting requirements on everyone in the complex who desires to use that particular area, these restrictions may be considered by some to be "significant interference" under section 28(d) of the Act.

Moreover, I find that under section 27 of the Act a landlord may only restrict or terminate a facility or service provided that the landlord(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy. agreement resulting from the termination or restriction of the service or facility.

Given the above, I find that the tenant application has no merit and must be dismissed, and I do so without leave to reapply.

Conclusion

The tenant is not successful in the application to force the landlord to comply with the Act and the application is dismissed without leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 21, 2013

Residential Tenancy Branch